

SENATE BILL NO. _____ HOUSE BILL NO. _____

1 A BILL to amend and reenact § 2.2-3705.7 of the Code of Virginia, relating to the Virginia Freedom of
2 Information Act; working papers and correspondence.

3 **Be it enacted by the General Assembly of Virginia:**

4 **1. That § 2.2-3705.7 of the Code of Virginia is amended and reenacted as follows:**

5 **§ 2.2-3705.7. Exclusions to application of chapter; records of specific public bodies and**
6 **certain other limited exemptions.**

7 The following records are excluded from the provisions of this chapter but may be disclosed by
8 the custodian in his discretion, except where such disclosure is prohibited by law:

9 1. State income, business, and estate tax returns, personal property tax returns, scholastic and
10 confidential records held pursuant to § 58.1-3.

11 2. Working papers ~~and correspondence~~ of the Office of the Governor; Lieutenant Governor; the
12 Attorney General; the members of the General Assembly, the Division of Legislative Services, or the
13 Clerks of the House of Delegates and the Senate of Virginia; the mayor or chief executive officer of any
14 political subdivision of the Commonwealth; or the president or other chief executive officer of any
15 public institution of higher education in Virginia. However, no record, which is otherwise open to
16 inspection under this chapter, shall be deemed exempt by virtue of the fact that it has been attached to or
17 incorporated within any working paper or correspondence.

18 As used in this subdivision:

19 "Members of the General Assembly" means each member of the Senate of Virginia and the
20 House of Delegates and their legislative aides when working on behalf of such member.

21 "Office of the Governor" means the Governor; his chief of staff, counsel, director of policy,
22 Cabinet Secretaries, and the Assistant to the Governor for Intergovernmental Affairs; and those
23 individuals to whom the Governor has delegated his authority pursuant to § 2.2-104.

24 "Working papers" means those records, including correspondence, prepared by or for an above-
25 named public official for his personal ~~or~~ deliberative use.

26 3. Library records that can be used to identify both (i) any library patron who has borrowed
27 material from a library and (ii) the material such patron borrowed.

28 4. Contract cost estimates prepared for the confidential use of the Department of Transportation
29 in awarding contracts for construction or the purchase of goods or services, and records and automated
30 systems prepared for the Department's Bid Analysis and Monitoring Program.

31 5. Lists of registered owners of bonds issued by a political subdivision of the Commonwealth,
32 whether the lists are maintained by the political subdivision itself or by a single fiduciary designated by
33 the political subdivision.

34 6. Records and writings furnished by a member of the General Assembly to a meeting of a
35 standing committee, special committee or subcommittee of his house established solely for the purpose
36 of reviewing members' annual disclosure statements and supporting materials filed under § 30-110 or of
37 formulating advisory opinions to members on standards of conduct, or both.

38 7. Customer account information of a public utility affiliated with a political subdivision of the
39 Commonwealth, including the customer's name and service address, but excluding the amount of utility
40 service provided and the amount of money paid for such utility service.

41 8. Personal information, as defined in § 2.2-3801, (i) filed with the Virginia Housing
42 Development Authority concerning individuals who have applied for or received loans or other housing
43 assistance or who have applied for occupancy of or have occupied housing financed, owned or otherwise
44 assisted by the Virginia Housing Development Authority; (ii) concerning persons participating in or
45 persons on the waiting list for federally funded rent-assistance programs; (iii) filed with any local
46 redevelopment and housing authority created pursuant to § 36-4 concerning persons participating in or
47 persons on the waiting list for housing assistance programs funded by local governments or by any such
48 authority; or (iv) filed with any local redevelopment and housing authority created pursuant to § 36-4 or
49 any other local government agency concerning persons who have applied for occupancy or who have
50 occupied affordable dwelling units established pursuant to § 15.2-2304 or 15.2-2305. However, access
51 to one's own information shall not be denied.

52 9. Records regarding the siting of hazardous waste facilities, except as provided in § 10.1-1441,
53 if disclosure of them would have a detrimental effect upon the negotiating position of a governing body
54 or on the establishment of the terms, conditions and provisions of the siting agreement.

55 10. Records containing information on the site specific location of rare, threatened, endangered
56 or otherwise imperiled plant and animal species, natural communities, caves, and significant historic and
57 archaeological sites if, in the opinion of the public body that has the responsibility for such information,
58 disclosure of the information would jeopardize the continued existence or the integrity of the resource.
59 This exemption shall not apply to requests from the owner of the land upon which the resource is
60 located.

61 11. Records, memoranda, working papers, graphics, video or audio tapes, production models,
62 data and information of a proprietary nature produced by or for or collected by or for the Virginia
63 Lottery relating to matters of a specific lottery game design, development, production, operation, ticket
64 price, prize structure, manner of selecting the winning ticket, manner of payment of prizes to holders of
65 winning tickets, frequency of drawings or selections of winning tickets, odds of winning, advertising, or
66 marketing, where such official records have not been publicly released, published, copyrighted or
67 patented. Whether released, published or copyrighted, all game-related information shall be subject to
68 public disclosure under this chapter upon the first day of sales for the specific lottery game to which it
69 pertains.

70 12. Records of the Virginia Retirement System, acting pursuant to § 51.1-124.30, or of a local
71 retirement system, acting pursuant to § 51.1-803, or of the Rector and Visitors of the University of
72 Virginia, acting pursuant to § 23-76.1, or of the Virginia College Savings Plan, acting pursuant to § 23-
73 38.77, relating to the acquisition, holding or disposition of a security or other ownership interest in an
74 entity, where such security or ownership interest is not traded on a governmentally regulated securities
75 exchange, to the extent that: (i) such records contain confidential analyses prepared for the Rector and
76 Visitors of the University of Virginia, prepared by the retirement system or the Virginia College Savings
77 Plan, or provided to the retirement system or the Virginia College Savings Plan under a promise of
78 confidentiality, of the future value of such ownership interest or the future financial performance of the

79 entity; and (ii) disclosure of such confidential analyses would have an adverse effect on the value of the
80 investment to be acquired, held or disposed of by the retirement system, the Rector and Visitors of the
81 University of Virginia, or the Virginia College Savings Plan. Nothing in this subdivision shall be
82 construed to prevent the disclosure of records relating to the identity of any investment held, the amount
83 invested, or the present value of such investment.

84 13. Names and addresses of subscribers to Virginia Wildlife magazine, published by the
85 Department of Game and Inland Fisheries, provided the individual subscriber has requested in writing
86 that the Department not release such information.

87 14. Financial, medical, rehabilitative and other personal information concerning applicants for or
88 recipients of loan funds submitted to or maintained by the Assistive Technology Loan Fund Authority
89 under Chapter 11 (§ 51.5-53 et seq.) of Title 51.5.

90 15. Records of the Virginia Commonwealth University Health System Authority pertaining to
91 any of the following: an individual's qualifications for or continued membership on its medical or
92 teaching staffs; proprietary information gathered by or in the possession of the Authority from third
93 parties pursuant to a promise of confidentiality; contract cost estimates prepared for confidential use in
94 awarding contracts for construction or the purchase of goods or services; data, records or information of
95 a proprietary nature produced or collected by or for the Authority or members of its medical or teaching
96 staffs; financial statements not publicly available that may be filed with the Authority from third parties;
97 the identity, accounts or account status of any customer of the Authority; consulting or other reports paid
98 for by the Authority to assist the Authority in connection with its strategic planning and goals; the
99 determination of marketing and operational strategies where disclosure of such strategies would be
100 harmful to the competitive position of the Authority; and data, records or information of a proprietary
101 nature produced or collected by or for employees of the Authority, other than the Authority's financial or
102 administrative records, in the conduct of or as a result of study or research on medical, scientific,
103 technical or scholarly issues, whether sponsored by the Authority alone or in conjunction with a
104 governmental body or a private concern, when such data, records or information have not been publicly

105 released, published, copyrighted or patented. This exemption shall also apply when such records are in
106 the possession of the Virginia Commonwealth University.

107 16. Records of the Department of Environmental Quality, the State Water Control Board, State
108 Air Pollution Control Board or the Virginia Waste Management Board relating to (i) active federal
109 environmental enforcement actions that are considered confidential under federal law and (ii)
110 enforcement strategies, including proposed sanctions for enforcement actions. Upon request, such
111 records shall be disclosed after a proposed sanction resulting from the investigation has been proposed
112 to the director of the agency. This subdivision shall not be construed to prohibit the disclosure of records
113 related to inspection reports, notices of violation, and documents detailing the nature of any
114 environmental contamination that may have occurred or similar documents.

115 17. As it pertains to any person, records related to the operation of toll facilities that identify an
116 individual, vehicle, or travel itinerary including, but not limited to, vehicle identification data, vehicle
117 enforcement system information; video or photographic images; Social Security or other identification
118 numbers appearing on driver's licenses; credit card or bank account data; home addresses; phone
119 numbers; or records of the date or time of toll facility use.

120 18. Records of the Virginia Lottery pertaining to (i) the social security number, tax identification
121 number, state sales tax number, home address and telephone number, personal and lottery banking
122 account and transit numbers of a retailer, and financial information regarding the nonlottery operations
123 of specific retail locations; and (ii) individual lottery winners, except that a winner's name, hometown,
124 and amount won shall be disclosed.

125 19. Records of the Board for Branch Pilots relating to the chemical or drug testing of a person
126 regulated by the Board, where such person has tested negative or has not been the subject of a
127 disciplinary action by the Board for a positive test result.

128 20. Records, investigative notes, correspondence, and information pertaining to the planning,
129 scheduling and performance of examinations of holder records pursuant to the Uniform Disposition of
130 Unclaimed Property Act (§ 55-210.1 et seq.) prepared by or for the State Treasurer, his agents,
131 employees or persons employed to perform an audit or examination of holder records.

132 21. Records of the Virginia Department of Emergency Management or a local governing body
133 relating to citizen emergency response teams established pursuant to an ordinance of a local governing
134 body, to the extent that such records reveal the name, address, including e-mail address, telephone or
135 pager numbers, or operating schedule of an individual participant in the program.

136 22. Records of state or local park and recreation departments and local and regional park
137 authorities to the extent such records contain information identifying a person under the age of 18 years.
138 However, nothing in this subdivision shall operate to prohibit the disclosure of information defined as
139 directory information under regulations implementing the Family Educational Rights and Privacy Act,
140 20 U.S.C. § 1232g, unless the public body has undertaken the parental notification and opt-out
141 requirements provided by such regulations. Access shall not be denied to the parent, including a
142 noncustodial parent, or guardian of such person, unless the parent's parental rights have been terminated
143 or a court of competent jurisdiction has restricted or denied such access. For records of such persons
144 who are emancipated, the right of access may be asserted by the subject thereof. Any parent or
145 emancipated person who is the subject of the record may waive, in writing, the protections afforded by
146 this subdivision. If the protections are so waived, the public body shall open such records for inspection
147 and copying.

148 23. Records submitted for inclusion in the Statewide Alert Network administered by the
149 Department of Emergency Management, to the extent that they reveal names, physical addresses, email
150 addresses, computer or internet protocol information, telephone numbers, pager numbers, other wireless
151 or portable communications device information, or operating schedules of individuals or agencies,
152 where the release of such information would compromise the security of the Statewide Alert Network or
153 individuals participating in the Statewide Alert Network.

154 24. Records of the Judicial Inquiry and Review Commission made confidential by § 17.1-913.

155 25. Records of the Virginia Retirement System acting pursuant to § 51.1-124.30, of a local
156 retirement system acting pursuant to § 51.1-803 (hereinafter collectively referred to as the retirement
157 system), or of the Virginia College Savings Plan, acting pursuant to § 23-38.77 relating to:

158 a. Internal deliberations of or decisions by the retirement system or the Virginia College Savings
159 Plan on the pursuit of particular investment strategies, or the selection or termination of investment
160 managers, prior to the execution of such investment strategies or the selection or termination of such
161 managers, to the extent that disclosure of such records would have an adverse impact on the financial
162 interest of the retirement system or the Virginia College Savings Plan; and

163 b. Trade secrets, as defined in the Uniform Trade Secrets Act (§ 59.1-336 et seq.), provided by a
164 private entity to the retirement system or the Virginia College Savings Plan, to the extent disclosure of
165 such records would have an adverse impact on the financial interest of the retirement system or the
166 Virginia College Savings Plan.

167 For the records specified in subdivision b to be excluded from the provisions of this chapter, the
168 entity shall make a written request to the retirement system or the Virginia College Savings Plan:

169 (1) Invoking such exclusion prior to or upon submission of the data or other materials for which
170 protection from disclosure is sought;

171 (2) Identifying with specificity the data or other materials for which protection is sought; and

172 (3) Stating the reasons why protection is necessary.

173 The retirement system or the Virginia College Savings Plan shall determine whether the
174 requested exclusion from disclosure meets the requirements set forth in subdivision b.

175 Nothing in this subdivision shall be construed to authorize the withholding of the identity or
176 amount of any investment held or the present value and performance of all asset classes and subclasses.

177 26. Records of the Department of Corrections made confidential by § 53.1-233.

178 27. Records maintained by the Department of the Treasury or participants in the Local
179 Government Investment Pool (§ 2.2-4600 et seq.), to the extent such records relate to information
180 required to be provided by such participants to the Department to establish accounts in accordance with
181 § 2.2-4602.

182 28. Personal information, as defined in § 2.2-3801, contained in the Veterans Care Center
183 Resident Trust Funds concerning residents or patients of the Department of Veterans Services Care
184 Centers, except that access shall not be denied to the person who is the subject of the record.

185 29. Records maintained in connection with fundraising activities by the Veterans Services
186 Foundation pursuant to § 2.2-2716 to the extent that such records reveal the address, electronic mail
187 address, facsimile or telephone number, social security number or other identification number appearing
188 on a driver's license, or credit card or bank account data of identifiable donors, except that access shall
189 not be denied to the person who is the subject of the record. Nothing in this subdivision, however, shall
190 be construed to authorize the withholding of records relating to the amount, date, purpose, and terms of
191 the pledge or donation or the identity of the donor, unless the donor has requested anonymity in
192 connection with or as a condition of making a pledge or donation. The exclusion provided by this
193 subdivision shall not apply to protect from disclosure (i) the identities of sponsors providing grants to or
194 contracting with the foundation for the performance of services or other work or (ii) the terms and
195 conditions of such grants or contracts.

196 30. Names, physical addresses, telephone numbers, and email addresses contained in
197 correspondence between an individual and a member of the governing body, school board, or other
198 public body of the locality in which the individual is a resident, unless the correspondence relates to the
199 transaction of public business. However, no record that is otherwise open to inspection under this
200 chapter shall be deemed exempt by virtue of the fact that it has been attached to or incorporated within
201 any such correspondence.

202 31. Records of the Commonwealth's Attorneys' Services Council, to the extent such records are
203 prepared for and utilized by the Commonwealth's Attorneys' Services Council in the training of state
204 prosecutors or law-enforcement personnel, where such records are not otherwise available to the public
205 and the release of such records would reveal confidential strategies, methods or procedures to be
206 employed in law-enforcement activities, or materials created for the investigation and prosecution of a
207 criminal case.

208 32. Records provided to the Department of Aviation by other entities of the Commonwealth in
209 connection with the operation of aircraft, where the records would not be subject to disclosure by the
210 entity providing the records. The entity providing the records to the Department of Aviation shall

211 identify the specific portion of the records to be protected and the applicable provision of this chapter
212 that exempts the record or portions thereof from mandatory disclosure.

213 33. Records created or maintained by or on the behalf of the judicial performance evaluation
214 program related to an evaluation of any individual justice or judge made confidential by § 17.1-100.

215 34. (Effective July 1, 2018) Records of the Virginia Alcoholic Beverage Control Authority to the extent
216 such records contain (i) information of a proprietary nature gathered by or in the possession of the
217 Authority from a private entity pursuant to a promise of confidentiality; (ii) trade secrets, as defined in
218 the Uniform Trade Secrets Act (§ 59.1-336 et seq.), of any private entity; (iii) financial records of a
219 private entity, including balance sheets and financial statements, that are not generally available to the
220 public through regulatory disclosure or otherwise; (iv) contract cost estimates prepared for the (a)
221 confidential use in awarding contracts for construction or (b) purchase of goods or services; or (v) the
222 determination of marketing and operational strategies where disclosure of such strategies would be
223 harmful to the competitive position of the Authority.

224 In order for the records identified in clauses (i) through (iii) to be excluded from the provisions
225 of this chapter, the private entity shall make a written request to the Authority:

226 a. Invoking such exclusion upon submission of the data or other materials for which protection
227 from disclosure is sought;

228 b. Identifying with specificity the data or other materials for which protection is sought; and

229 c. Stating the reasons why protection is necessary.

230 The Authority shall determine whether the requested exclusion from disclosure is necessary to
231 protect such records of the private entity. The Authority shall make a written determination of the nature
232 and scope of the protection to be afforded by it under this subdivision.

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